IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

FIRST APPEAL NO.1047 OF 1991
IN
L.A.R.NO.22 OF 1987

The State of Maharashtra)
(through the Collector, Satara))
The Special Land Acquisition)
Officer No.12, Satara.) ..Appellant
(Org.Opponent)

Versus

M/s. Kantilal and Vinodlal)
C/o. Kantilal & Kalidas Shah)
Pavai Naka, Satara) ..Respondent
(Org.Claimant)

Mr.K.K.Tated, AGP for Appellant/State.

Mr.G.R.Rege with S.M.Railkar for Respondent.

WITH

FIRST APPEAL NO.661 OF 1992

M/s.Kantilal & Vinodlal)
C/o. Kantilal Kalidas Shah)
Pavai Naka, Satara) ..Appellant
(Org.Claimant)

Versus

The State of Maharashtra)
(through the Collector))
The Special Land Acquisition)
Officer, No.12, Satara) ..Respondent
(Org.Referee)

Mr.G.R.Rege with S.M.Railkar for the Appellant.

Mr.K.K.Tated AGP for Respondent/State.

Coram : R.M.S.Khandeparkar &
V.M.Kanade,JJ

Date : 26.08.2005.

Judgment :- (Per : V.M.Kanade,J)

1. Both these appeals arise out of the Judgment and order passed by the Joint Civil Judge, Senior Division Satara in Land Reference No.22/87. The State of Maharashtra and the claimant are both challenging the said Judgment and order passed by the Land Reference Court dated 5.2.1991. The Reference court by the said Judgment and order declared that the actual area of the land acquired is 6750 sq.mtrs. and directed the State Govt. to pay Rs.4,26,600/- to the Claimants by way of compensation and further to pay 30% solatium of the said amount. Further direction was given to pay interest @ 12% p.a. on the said amount from the date of publication of the notification under Section 4 of the Land Acquisition Act i.e. 10.4.1984 till the date of declaration of the award i.e. 20.3.1987 and further interest @ 9% on the said amount from the date of handing over possession till the realisation of the amount to the claimants.

2. Brief facts of the case are as under :-

. The lands in question bearing plot nos.37, 38, 39, 40 & 50 situated at village Sailapur Taluka Karal (Hereinafter referred to as "Land under

acquisition") was sought to be acquired by the Govt. for the purpose of starting a Pharmacy college in the said area. Notification under Section 6 was issued on 21.11.1984 and award was passed on 20.3.1987.

3. The claimant in his application under Section 18 of the said Act claimed compensation @ Rs.25/- per sq. feet in respect of an area of land admeasuring 73,150 sq. feet in respect of the 5 plots which were acquired. Before the reference Court the claimant examined himself. He did not produce any sale deed for the purpose of establishing the market value of the land nor any evidence was brought before the Court in respect of similar cases in which award was passed by the reference Court, which were passed in cases of land which were similarly situated or were in the vicinity of the land of the claimant. The Reference Court granted compensation in respect of land admeasuring 6750 sq. meters and directed the State to pay Rs.4,26,600/- by way of compensation.

4. The learned AGP Shri Tated appearing on behalf of the appellants/State has taken us through the Judgment and order of the Reference Court as also the oral and documentary evidence. He submitted that the reference Court has erred in coming to the conclusion that the claimant was entitled to get

compensation @ 85 per sq. meters in respect of the lands which were acquired. He submitted that the lower court had relied on the land reference awards bearing nos.4/88, 6/88, 10/88, 12/88, and 14/88 in which compensation @ Rs.85 per sq. meters was granted and had without comparing the said lands in question with the lands in the present case, the reference Court had awarded compensation @ Rs.85/- per sqr. meters. He further submitted that this finding which was recorded by the lower Court was inconsistent with the finding which was recorded in the same paragraph. He submitted that the lower Court after observing that the certified copy of the Judgment in land reference no.1/97 on which reliance was placed by the claimant could not be considered since the claimants had not brought on record the similarity between the lands under acquisition in this land reference thereafter, in the same paragraph, the learned Judge had relied on land reference bearing L.R.4, 6, 12, 14 of 1988 which were not even part of the record. He submitted that the order passed by the lower Court was completely arbitrary and the lower Court was not justified in relying on land reference nos.4/88, 6/88, 10/88, 12/88 and 14/88 which were decided by the same Court before the award in the present case was passed. He submitted that approach of the lower Court was therefore, contrary to law and contrary to the well established principles laid down by the Hon’ble

Supreme Court and this Court in respect of the manner and method in which reliance could be placed on similar awards in land reference cases in respect of land which were in the near vicinity of the land in question. He relied on the Judgments of the Supreme Court in the case of Kiran Tandon Vs. Allahabad Development Authority reported in AIR 2004 SC 2006 and in the case of V.H.Reddy V/s. Land Acquisition Officer & Mandal R.Officer reported in AIR 2004 SC 1185 in support of his submission. He also relied upon the Judgment of the Supreme Court in the case of Panna Lal Ghosh Vs. Land Acquisition Collector reported in AIR 2004 SC 1179.

5. The learned Advocate for the respondent and the appellant in First Appeal No.661/94 submitted that it is a settled principle in law that if a finding is given by the lower appellate Court after appreciating the evidence on record and if the lower Court had come to a particular conclusion, ordinarily such a finding should not be disturbed by the High Court in First Appeal. He submitted that the lower Court had after taking into consideration the evidence which was brought on record had come to the conclusion that the market value of the lands in question was Rs.85/- per sq. feet. He submitted that the lower Court had taken into consideration the entire evidence on record as also the various other land reference awards which were decided by

the same Court prior to the Judgment and award being passed in the present case. He submitted that the fact that these land reference awards were in fact decided by the same Court was not disputed by the appellant. Neither any ground had been taken in the appeal memo to dispute the correctness of the finding and statement recorded by the lower appellate Court. He submitted that the Govt. also had not brought on record the land reference award on which reliance was placed by the lower reference court to show that in fact land in question was not in the vicinity of the present lands which were acquired by the State Govt. He submitted that though the order of the reference Court may not be very happily worded, the reference Court was aware of the fact that it was the duty of the claimants to establish the similarity between the lands under acquisition if the land reference is pending before the Court and the lands in question in the land reference award which was referred by the Claimant. He submitted that there was no reason therefore, to disbelieve the finding recorded by the reference Court.

6. He further invited our attention to the cross-examination of the claimant by the Government Pleader. In the cross-examination he submitted that several facts had been brought on record which clearly indicated that though the land was barren,

it had a high potential value for development and it was surrounded by number of educational institutions and that the said area itself was referred as Vidyanagar. He invited our attention to the cross-examination in which the claimant had described how the land was situated near a particular river and that the industrial area was situated near the land which was acquired. He submitted that therefore, the reference Court was fully justified in coming to the conclusion that the market value of the lands was Rs.85 per sq.ft. In support of the appeal which is filed by the claimant he submitted that in fact the reference Court ought to have taken into consideration the statement made by the claimant in the cross-examination and ought to have awarded a higher rate than the one which was granted by the lower appellate Court.

7. In the present case, the admitted position is that the claimant has not produced any sale instances on record to indicate what was the market value of the land either before the acquisition of land or at the time when the notification under Section 4 of the Land Acquisition Act was issued. The law in respect of the method of calculating the market value is now quite well established and burden of proving the market value is entirely on the claimant and it is his duty to establish either by producing sale deeds which are proximate in point

of time and proximate in point of situation to the land and by establishing that the sale deeds are in respect of same type of land as the land which is sought to be acquired or alternatively the claiment has to establish on the basis of Judgments delivered in cases arising out of the same notification with respect to other lands mentioned in the said notification or in respect of acquisition of lands where award is passed by the reference Court by establishing the similarity in respect of the two lands in all respects. In our view, in the present case the lower Court though it was conscious of the fact that it was necessary for the claimant to have brought on record the similarity in respect of the land which was sought to be acquired and the lands mentioned in the land reference and being conscious of these facts had refused to rely on land reference no.1/97 and after taking into consideration this fact had consciously relied on land reference cases decided by the same Court being the land reference nos.4/88, 6/88, 10/88, 12/88 and 14/88 which were decided by the said Court before the award in the present case was passed. The reference Court therefore, had exercised its discretion after being conscious of the said fact and therefore, it cannot be said that the said reliance by the lower court was arbitrary particularly when the Govt. had not brought on record the said Judgment given by the appellate court and further it is not the case of

the Govt. that in fact the Judgment and award on which reliance was placed by the reference Court was either factually incorrect or the statement made there-in was false. Therefore, in our view, there is no reason to interfere with the said finding which is recorded by the lower Court.

8. However, lower reference Court has not taken into consideration the admitted position that the land in question was a barren land and though the other lands were developed, there was no evidence brought on record to indicate whether electricity, water and other basic amenities were available to the land in question. In the absence of this evidence on record, in our view, it was the duty of the lower Court to have made deductions to the tune of 33% from the compensation of Rs.85 per sq.feet. Normally it is a well settled rule that if the land is completely un-developed or is an agricultural land, deduction of 53% is made from the rate of compensation which is determined by the reference Court. However, in the present case it has come on record in cross-examination and also in the examination-in-chief that the plot though it was barren, was not completely un-developed. The lower Court therefore, in our view, has completely overlooked this aspect of the case and therefore, to that extent the order of the lower appellate Court will have to be modified.

9. There cannot be any dispute regarding the ratio on which reliance is placed by the learned Advocate for the State. In fact even the lower reference Court was quite conscious of the said fact and therefore, it has relied on the Judgment in the case of Hukam Chand V/s. Haryana State reported in AIR 1989 Punjab and Haryana 27 and therefore, had rightly refused to rely on the land reference no.1/97.

10. So far as the contention of the learned Advocate for the claimants in their First Appeal is concerned, we are unable to accept the submissions made in that behalf as no sale instances have been brought on record so as to accept the submission made for enhancement of the compensation.

11. It is settled position in law that this Court in First Appeal can exercise its power under Order 41 Rule 33 and record a finding even if it is not raised in the appeal Court.

12. In the result, the First Appeal No.1047/91 is partly allowed. The compensation which is awarded by the Joint Civil Judge Senior Division Satara in land reference no.22/87 @ 85 per sq. meters on amount of Rs.4,26,600/- is reduced by 33% and thereafter the calculation and solatium of interest

will be accordingly calculated and modified. The rest of the findings are confirmed. First Appeal filed by the claimant being F.A.661/92 is dismissed. Under the circumstances, there shall be no order as to costs. The claimants are directed to refund the excess amount which they have received alongwith interest @ 10% p.a. from the date they received the said amount within a period of 8 weeks. The First Appeal is partly allowed in the above terms.

(R.M.S.Khandeparkar,J)

(V.M.Kanade,J)